

Fair Political Practices Commission
MEMORANDUM

To: Chairman Johnson and Commissioners Hodson, Huguenin, Leidigh, and Remy

From: Scott Hallabrin, General Counsel

Subject: Finding Required for Holding Special Meeting on Less than 10 days' Notice – Government Code Section 11125.4(c)

Date: January 23, 2009

Proposed Commission Action and Staff Recommendation: Make a finding, under Government Code Section 11125.4(c), that holding this meeting on less than the usual 10 days' public notice is necessary, as described below.

Reason and Authority for Meeting on Less than 10-Days' Public Notice: This meeting has been convened by giving less than the usual 10-days' notice to the public. This is permissible under Government Code Section 11125.4 when a state body needs to consider, among other things, pending litigation and compliance with the usual 10-day notice requirement in the Bagley-Keene Open Meeting Act (see Gov. Code Sec. 11125) "would impose a substantial hardship on the state body or where immediate action is required to protect the public interest" (Gov. Code Sec. 11125.4(a)). When a body acts under this provision, it must give at least 48-hours' advance notice of its meeting (see Gov. Code Sec. 11125(b)) and make the finding of substantial hardship or protecting the public interest in open session.

On about January 7, 2009, a lawsuit was filed against the Commission in federal court (*ProtectMarriage.com, et al. v. Bowen, et al.*, Federal District Court for the Eastern District of California, Case No. 2:09-cv-00058-MCE-DAD) and on January 14, 2009, the Commission was formally served with the complaint and documents indicating that the Plaintiffs' were seeking a preliminary injunction immediately enjoining operation of certain campaign reporting provisions under the Political Reform Act. The Commission was originally notified that the motion would be heard by the Court on January 26, 2009, this date was later changed to January 29, 2009.

The Commission staff has now completed and, in conjunction with the Attorney General, filed its opposition to the motion for preliminary injunction and feels it is now necessary to apprise the Commission of the case status and receive guidance prior to oral argument before the Court on January 29, 2009. At the time the Commission staff was served with the motion for preliminary injunction and for several days thereafter it did not anticipate a need for the Commission to meet prior to the January 29th court hearing. However, issues and events in the case have since transpired that staff now feels it is necessary for the

Commission to meet prior to the court hearing and provide guidance to the staff on matters that could arise at the hearing.

Failure by the Commission to obtain and consider information on the case, and to provide guidance to the staff, prior to the January 29th court hearing could have a prejudicial effect on the Commission's posture in the federal case and adversely affect the Commission's duty to defend the reporting provisions of the Political Reform Act, thereby jeopardizing the public interest. As a consequence, it is necessary for the Commission to meet before the January 29th court hearing, and this may only be accomplished by holding a Commission meeting with less than the usual 10-days' notice prior to holding the meeting, as permitted under Government Code Section 11125.4.

Recommended Finding: Based on the foregoing, staff proposes the Commission make the following finding:

1. The Commission is a defendant in the case of *ProtectMarriage.com, et al. v. Bowen, et al.* (Federal District Court for the Eastern District of California, Case No. 2:09-cv-00058-MCE-DAD). A hearing on a motion for preliminary injunction enjoining the operation of certain campaign reporting provisions of the Political Reform Act is scheduled in this action for January 29, 2009.
2. The Commission was formally served with the motion for preliminary injunction on January 14, 2009 and, at that time and for several days thereafter, the Commission staff did not anticipate a need for the Commission to meet prior to the January 29th court hearing.
3. However, issues and events in the case have since transpired that staff now feels it is necessary for the Commission to meet prior to the court hearing so that it can confer with and receive guidance from the Commission regarding several issues in the case.
4. Failure by the Commission to immediately obtain and consider information on the case prior to the January 29th court hearing could have a prejudicial effect on the Commission's posture in the federal case and adversely affect the Commission's duty to defend the campaign reporting provisions of the Political Reform Act, thereby jeopardizing the public interest.
5. As a consequence, it is necessary for the Commission to meet before the January 29th court hearing, and this may only be accomplished by holding a Commission meeting with less than the usual 10-days' notice prior to holding the meeting, as permitted under Government Code Section 11125.4.

Voting on the Finding: Government Code Section 11125(c) requires a two-thirds vote (four votes) to make the finding if all Commissioners are present and a unanimous vote if less than all Commissioners are present.